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FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Nov 12, 2019

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

No. 4:19-CR-06063-SMJ-01
4:19-CR-06063-SMJ-02

Plaintiff,

v.

CASE MANAGEMENT ORDER

MONICA PESINA, (01),
NICHOLAS SEAN CARTER, (02),

Defendants.

The Court now enters the following Case Management Order, which sets forth the hearings and requirements the parties will observe in this matter. To the extent this Order conflicts with any previously-entered Orders in this matter, this Order shall govern. All counsel are expected to carefully read and abide by this Order. The Court will grant relief from the requirements in this Order only upon motion and good cause shown.

IT IS HEREBY ORDERED:

1. **Local Criminal Rules.** Counsel shall comply with the Eastern District of Washington Local Criminal Rules of Procedure (LCrR), except where specifically modified below or by subsequent Order.

1 **2. Emailing the Court.** Where this Order requires counsel to email
2 documents to the Court, all documents shall be attached to the email
3 in Microsoft Word (.doc/.docx) or rich-text (.rtf) format. The subject
4 line of each email shall be formatted as follows:

5 **[Case No.]; [Case Name]; [Title of Document]**

6 (e.g.: *CR-13-9999-SMJ; USA v. Doe; Trial Brief*)

7 **3. Discovery**

8 **A.** All discovery documents must be Bates-stamped with a unique
9 identifier and must be produced digitally in a text-searchable
10 format. The Court will grant relief from this requirement only
11 in exceptional circumstances, upon motion and good cause
12 shown.

13 **B.** Production of discovery shall be governed by Local Criminal
14 Rule 16. *See LCrR 16.*

15 **C.** The Court presumes a request for discovery and disclosure
16 under Federal Rules of Evidence 404(b), 608(b), and 609, *Brady*
17 *v. Maryland*, 373 U.S. 83 (1963), *Giglio v. United States*, 405
18 U.S. 150 (1972), *United States v. Henthorn*, 931 F.2d 29 (9th
19 Cir. 1991), and their progeny, and as such these items are
20 ordered disclosed by the deadline set forth in LCrR 16.

1 **4. Expert-Witness Summaries**

2 **A.** When each party produces to opposing counsel summaries of its
3 expert-witness testimony for which disclosure is required under
4 Federal Rule of Criminal Procedure 16 and Local Criminal Rule
5 16, counsel shall also email an electronic copy of the summary
6 to the Court at MendozaOrders@waed.uscourts.gov.

7 **B.** All summaries of expert witness testimony must conform to
8 Federal Rule of Criminal Procedure 16, Local Criminal Rule 16,
9 and applicable case law interpreting those Rules. The Court will
10 not permit an expert witness to testify about opinions which are
11 not explicitly expressed in that expert's summary. *See, e.g.,*
12 *United States v. W.R. Grace*, 526 F.3d 499 (9th Cir. 2008).

13 **5. Motions Practice**

14 **A. Generally.** All motions shall either be: a) noted for hearing
15 without oral argument fourteen (14) days after filing, or b) noted
16 for hearing with oral argument at the pretrial conference
17 pursuant to Local Criminal Rule 12(c). Responses and replies
18 to motions must be filed in accordance with Local Criminal Rule
19 45 and 47, which incorporate the requirements of Local Rule
20 7.1. For motions heard at the pretrial conference, parties may

1 agree to an alternative briefing schedule without leave of the
2 Court, provided all responses and replies are filed no later than
3 five days before the pretrial conference.

4 **B. Expedited Hearing.** Any party seeking an expedited hearing on
5 a time-sensitive matter must comply with Local Criminal Rule
6 12(c)(3).

7 **6. Witness Testimony.** At any hearing, including trial, in which witness
8 testimony is given, the witness must testify in Court and, absent
9 exceptional circumstances, may not appear by telephone or video
10 conference.

11 **7. Trial Continuances**

12 **A. Motion Deadline.** All motions to continue the trial must be
13 heard before or at the pretrial conference. Any motion to
14 continue trial made after the pretrial conference has
15 occurred will not be granted absent exceptional
16 circumstances.

17 **B. Statement of Reasons.** If the Defendant seeks a continuance, a
18 Speedy Trial Waiver and Statement of Reasons in support of the
19 motion to continue must be filed contemporaneously with the

1 motion.¹ The Statement of Reasons must 1) be signed by the
2 Defendant, 2) be signed by a certified translator, if applicable,
3 and 3) indicate the latest date upon which Defendant is willing
4 to proceed to trial.

5 **C. Procedure.** Before filing a motion to continue, counsel shall
6 first contact the Courtroom Deputy at (509) 943-8173 to obtain
7 new pretrial conference and trial dates consistent with the length
8 of the requested trial continuance. Thereafter, counsel shall
9 confer with opposing counsel regarding case management
10 deadlines² consistent with the new pretrial conference and trial
11 date. **All motions to continue must include proposed case**
12 **management deadlines (either joint or individual) to ensure**
13 **the to-be-imposed deadlines are best suited to this case.**

14 **8. Pretrial Conference**

15 **A.** The Pretrial Conference is **SET** for **December 19, 2019**, at
16 **11:30 AM in RICHLAND.** At this hearing, the Court will hear
17 **ALL** pretrial motions that are noted for oral argument.

18

19 ¹ The Court's Speedy Trial Waiver and Statement of Reasons form can be found at the following link:
20 http://www.waed.uscourts.gov/sites/default/files/forms/smj_stmt_reasons_mot_to_cont.pdf.

² A form with the Court's standard case management deadlines can be found at the following link:
<http://www.waed.uscourts.gov/sites/default/files/forms/Proposed%20Case%20Management%20Deadlines.pdf>.

1 **B.** All pretrial conferences are scheduled to last no more than
2 **thirty (30) minutes**, with each side allotted **fifteen (15)**
3 **minutes** to present their own motions and resist motions by
4 opposing counsel. If any party anticipates requiring longer than
5 fifteen minutes, that party must notify the Courtroom Deputy at
6 least seven (7) days prior to the hearing. **Any party who fails**
7 **to provide this notice will be limited to fifteen (15) minutes.**

8 **9. Trial**

9 **A.** Trial is set for **January 13, 2020**, at **9:00 AM** in **RICHLAND**.

10 The **final** pretrial conference will begin at **8:30 A.M.**

11 **10. Exhibit Lists**

12 **A.** On **January 7, 2020**, after conferring with counsel at the pretrial
13 conference each party shall file a list of exhibits the party intends to
14 introduce at trial. Each party shall also email copies of their exhibit
15 list to the Court at MendozaOrders@waed.uscourts.gov. The parties
16 shall provide their exhibit list in the following format:

Ex. #	Admitted	Description
1		Photograph of items seized
2		Aerial video surveillance from 1/1/2011. Start Time: 01:03:23 End Time: 01:09:54

Exhibit lists shall include a unique exhibit number and a brief description of the exhibit. For all exhibits consisting of an audio or video file, the exhibit list must designate the precise beginning and ending time indexes of the portion of the file the party intends to use at trial.

B. The USAO shall consecutively number their exhibits from **1 to 999**. In single-defendant cases, Defendant shall consecutively number exhibits from **1000 to 1999**; in multi-defendant cases, Defendants shall consecutively number exhibits from x000 to x999, substituting “x” for each Defendant’s assigned case identifier (e.g. Defendant 3 would number exhibits from 3000 to 3999, etc.). Exhibits shall be pre-marked for identification before trial commences.

11. Witness Lists. On January 7, 2020, after conferring with counsel at the pretrial conference, each party shall file and serve a list of witnesses that party intends to call to testify at trial. **The witness list must identify the existence, but need not include the name, of any CI the USAO intends to call to testify.** Parties shall email copies of their witness list to the Court at MendozaOrders@waed.uscourts.gov.

12. Trial Briefs, Proposed Jury Instructions and Verdict Form, and Requested Voir Dire. On January 3, 2020, after conferring with counsel at

1 the pretrial conference, each party shall file a trial brief, proposed jury
2 instructions and verdict form, and requested voir dire, in accordance with the
3 requirements below. Each party shall email copies to the Court at
4 MendozaOrders@waed.uscourts.gov.

5 **A. Trial Briefs.** Trial briefs shall not exceed twenty (20) pages
6 without prior Court approval, upon motion and good cause shown.

7 **B. Proposed Jury Instructions and Verdict Form.** Jury instructions
8 shall 1) address issues that are unique to the case, and 2) include
9 instructions regarding the elements of each charge or defense. If a
10 Ninth Circuit Model Jury Instruction exists for a particular charge or
11 defense, the parties shall provide the model instruction or shall submit
12 argument as to why the instruction is inadequate or no longer
13 supported by law. Proposed jury instructions shall be accompanied by
14 a proposed verdict form. **The parties must confer to develop joint**
15 **proposed jury instructions and the verdict form.** The Court will
16 only accept an individual party's proposed jury instructions on those
17 points/issues upon which the parties could not agree, and only if the
18 party's memoranda accompanying the individually-proposed
19 instruction(s) sets forth the legal authority and justification for why the
20 instruction is necessary.

1 C. ***Requested Voir Dire.*** The parties may request that the Court
2 include specific questions during the Court's standard voir dire.
3 Requested voir dire shall not duplicate information elicited in
4 the Clerk's Office Jury Questionnaire ("COJQ") and the Court's
5 Criminal Jury Trial Procedures Letter.

6 **13. Exhibit Binders.** On **January 3, 2020**, after conferring with counsel
7 at the pretrial conference, each party must provide to all other parties and to
8 the Court a Bates-stamped copy of all trial exhibits — or, in the case of
9 physical exhibits, a photograph or other reproduction of the exhibit — the
10 party intends to introduce at trial. All trial exhibits shall be organized
11 sequentially by exhibit number in a three-ring binder.

12 **14. JERS.**

13 **A.** The Court utilizes the Jury Evidence Recording System (JERS),
14 a system that makes electronic evidence available in the jury room
15 during deliberations. **Counsel shall promptly consult the Court's**
16 **"JERS Instructions for Attorneys"³ to ensure they acquire, retain,**
17 **and provide evidence to the Court in the necessary format.**

20 ³ This document can be found on the Court's public website at the following link:
<http://www.waed.uscourts.gov/content/jers-jury-evidence-recording-system-information-attorneys>.

1 **B.** On **January 7, 2020**, after conferring with counsel at the pretrial
2 conference, each party who intends to introduce evidence at trial must
3 supply a CD, DVD, or USB drive to the Courtroom Deputy containing
4 all of that party's exhibits in the required format. Counsel may contact
5 the Courtroom Deputy at (509) 943-8173 with any questions.

6 **15. Trial Notices.** On **January 3, 2020**, after conferring with counsel at
7 the pretrial conference, each party shall file a notice that indicates the amount
8 of time requested for opening statement and for voir dire. In addition, defense
9 counsel must indicate if his/her client waives presence at sidebar and jury
10 questions.

11 **16. Technology Readiness Meeting.** On **January 7, 2020**, any party
12 seeking to offer video or audio evidence at trial must meet with Court staff at
13 the location of the trial to verify compatibility with the Court's presentation
14 systems. The parties shall contact the Courtroom Deputy at (509) 943-8173
15 to arrange this meeting.

16 **17. Trial.** The jury trial is **SET for January 13, 2020, at 9:00 AM in**
17 **RICHLAND.** Counsel and Defendant shall be prepared to meet with the
18 Court at least thirty (30) minutes prior to the commencement of the trial.

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1 **18. Summary of Deadlines**

2 All pretrial motions, including discovery	
3 motions, <i>Daubert</i> motions, and motions <i>in</i>	
4 <i>limine</i>, filed	November 29, 2019
5 PRETRIAL CONFERENCE	December 19, 2019
6 <i>Deadline for motions to continue trial</i>	11:30 AM - RICHLAND
7 CIs' identities and willingness to be interviewed	
8 disclosed to Defendant (if applicable)	December 30, 2019
9 Grand jury transcripts produced to Defendant	
10 Case Agent:	December 30, 2019
11 CIs:	December 30, 2019
12 Other Witnesses:	December 30, 2019
13 Exhibit lists filed and emailed to the Court	January 7, 2020
14 Witness lists filed and emailed to the Court	January 7, 2020
15 Trial briefs, jury instructions, verdict forms, and	
16 requested voir dire filed and emailed to the Court	January 3, 2020
17 Exhibit binders delivered to all parties and to the	
18 Court	January 3, 2020
19 Delivery of JERS-compatible digital evidence	
20 files to the Courtroom Deputy	January 7, 2020
1 Trial notices filed with the Court	January 3, 2020
2 Technology readiness meeting (in-person)	January 7, 2020
3 JURY TRIAL	January 13, 2020
4	9:00 AM - RICHLAND

1 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this Order and
2 provide copies to all counsel, the U.S. Probation Office, and the U.S. Marshals
3 Service.

4 **DATED** this 12th day of November 2019.

5 
6 SALVADOR MENDEZA, JR.
United States District Judge